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SJC-12686

A.F. vs. D.F.

December 11, 2019.

Harassment Prevention. Supreme Judicial Court, Superintendence of inferior courts.

The petitioner, A.F., appeals from a judgment of a single justice of this court denying his petition for extraordinary relief under G. L. c. 211, § 3. We affirm.

This is the petitioner's second appeal to the full court regarding the denial of G. L. c. 211, § 3, relief in connection with a harassment prevention order issued against him in the Orange Division of the District Court Department. This court summarized the early procedural history of the case in its prior opinion:

"The respondent sought an abuse prevention order against the petitioner pursuant to G. L. c. 209A. After a hearing on the extension of the temporary ex parte order, a judge in the District Court declined to extend the G. L. c. 209A order and instead issued a one-year harassment prevention order pursuant to G. L. c. 258E. The judge subsequently denied the petitioner's motion to reconsider, and the petitioner then filed his G. L. c. 211, § 3, petition in the county court. The single justice denied the petition without a hearing."

A.F. v. D.F., 479 Mass. 1015, 1015 (2018). In that opinion, the court affirmed the denial of relief under G. L. c. 211, § 3, and instructed the petitioner that his remedy lay in the Appeals Court. Id. at 1016. Because the petitioner had expressed

concern "that the normal appellate process would be inadequate because of the time it would take to pursue the appeal and obtain a favorable outcome," this court also informed the petitioner that "[t]he remedy for this concern is to seek expedited review in the Appeals Court, a stay of the underlying order pending appeal, or both, not through a G. L. c. 211, § 3, petition in this court." Id.

Following the issuance of that opinion, rather than seek review by the Appeals Court, the petitioner filed a motion to vacate the harassment prevention order in the District Court. After several months passed without a ruling, he filed a petition in the county court, seeking an order to compel the District Court judge to rule on his motion. The District Court judge subsequently ruled on the motion -- denying it -- while the petition for relief in the county court was pending.¹

The petitioner alleges that he filed a notice of appeal in the District Court, appealing from the denial of his motion to vacate the harassment prevention order. The notice of appeal appears in the petitioner's addendum, but it does not appear as an entry on the District Court docket.

Subsequently, a hearing was held in the District Court at which the one-year harassment prevention order was extended and made permanent. Rather than file a notice of appeal in the District Court with respect to the permanent order, the petitioner filed another petition for extraordinary relief in the county court, seeking a stay of the order and requesting to have the matter transferred to the county court.

The single justice denied the petition without a hearing and instructed the petitioner, once again, that his appeal from such an order lay in the Appeals Court. In her order, the single justice further informed the petitioner that if he had failed to file a timely notice of appeal in the District Court, he could seek leave from the Appeals Court to file a late notice of appeal. The order also explained that the notice of appeal must be filed in the District Court. Based on a review of the District Court docket, it appears that the petitioner has yet to pursue the remedy identified by the single justice.

¹ The single justice subsequently denied that petition as moot.

We affirm the single justice's denial of relief for the same reasons that we affirmed the denial of relief in our previous opinion: "it is clear that the petitioner is not entitled to review pursuant to G. L. c. 211, § 3, because he has an adequate alternative remedy." A.F., 479 Mass. at 1015-1016, citing O'Brien v. Borowski, 461 Mass. 415, 417-418 (2012) (appeals from G. L. c. 258E harassment prevention orders to be filed in Appeals Court). The single justice did not err or abuse her discretion in denying relief.

Judgment affirmed.

A.F., pro se.